

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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|--|---|------------------------|
| In the Matter of Applications of             | ) |                        |
|  | ) |                        |
| MOUNT PLEASANT PARTNERS ALPHA                | ) | File No. 61246-CM-P-91 |
| MOUNT PLEASANT PARTNERS BETA                 | ) | File No. 61247-CM-P-91 |
|  | ) |                        |
| Applications for Authority to Construct and  | ) |                        |
| Operate Multichannel Multipoint Distribution | ) |                        |
| Service (MMDS) Stations in Mount Pleasant,   | ) |                        |
| Michigan                                     | ) |                        |

**MEMORANDUM OPINION AND ORDER**

**Adopted: June 24, 2003**

**Released: July 2, 2003**

By the Commission:

**I. INTRODUCTION**

1. We have before us a consolidated application for review (AFR) filed by Mount Pleasant Partners Alpha and Mount Pleasant Partners Beta (collectively, Mount Pleasant) on February 22, 2000.<sup>1</sup> The AFR challenges the action taken by the Video Services Division of the former Mass Media Bureau (Division) on January 20, 2000.<sup>2</sup> By letter, dated January 20, 2000, the Division affirmed the dismissal of applications filed by Mount Pleasant Partners Alpha<sup>3</sup> and Mount Pleasant Partners Beta<sup>4</sup> for authority to construct and operate Multichannel Multipoint Distribution Service (MMDS) stations on the E and F Group channels, respectively, in Mount Pleasant, Michigan. For the reasons discussed below, we deny the AFR to the extent that it seeks reinstatement and grant of the E Group Application, and we dismiss the AFR with respect to the F Group Application.

**II. BACKGROUND**

2. On August 1, 1991, Mount Pleasant filed applications for authority to construct and operate MMDS stations on the E and F Group channels, respectively, in Mount Pleasant, Michigan. On March 3, 1993, Mount Pleasant submitted interference studies for a group of forty-five previously proposed MMDS applications. The submissions were accompanied by a statement that there had been no service of the interference studies, as required by Section 21.902(g), due to an inability to obtain the necessary addresses from the Commission. The Domestic Radio Branch (Branch), Domestic Facilities

<sup>1</sup> Consolidated Application for Review (filed Feb. 22, 2000) (AFR).

<sup>2</sup> Letter from Charles E. Dziedzic, Assistant Chief, Video Services Division, Mass Media Bureau, FCC, to George A. West, Mount Pleasant Partners Alpha and Beta (Jan. 20, 2000) (Division Letter).

<sup>3</sup> FCC File No. 61246-CM-P-91 (filed Aug. 1, 1991) (E Group Application). Amendments to the application were filed on March 3, 1993.

<sup>4</sup> FCC File No. 61247-CM-P-91 (filed Aug. 1, 1991) (F Group Application). Amendments to the application were filed on March 3, 1993.

Division (DFD) of the former Common Carrier Bureau returned the applications to Mount Pleasant on August 11, 1993 for failure to serve all affected parties pursuant to Section 21.902(g) and/or failure to consider all previously-proposed or authorized Instructional Television Fixed Service (ITFS) or MMDS stations pursuant to Sections 21.902(c) and/or 21.902(i).<sup>5</sup> However, on September 10, 1993, the DFD set-aside the August 11 return of the applications and reinstated the applications *nunc pro tunc* to allow Mount Pleasant an opportunity to effectuate service of the interference analyses using addresses for the Big Rapids applicants that the DFD supplied.<sup>6</sup>

3. Almost a year later, on August 31, 1994, the Branch dismissed the Mount Pleasant applications.<sup>7</sup> With regard to the E Group Application, the Branch found that Mount Pleasant Partners Alpha failed to include the analysis of the potential for harmful co-channel interference for previously proposed co-channel Station WGW275 in Saginaw, Michigan, as required by Section 21.902(c)(1).<sup>8</sup> In addition, the Branch determined that the E Group Application was defective because Mount Pleasant Partners Alpha used different specifications to achieve a desired-to-undesired signal ratio of 45 dB with respect to the Big Rapids applications.<sup>9</sup> With regard to the F Group Application, the Branch found that Mount Pleasant Partners Beta failed to include the analysis of the potential for harmful co-channel interference for previously-proposed co-channel Station WMI369 in Saginaw, Michigan, as required by Section 21.902(c)(1).<sup>10</sup> Based on the above, the Branch dismissed the E and F Group Applications.

4. On October 11, 1994, Mount Pleasant filed a Consolidated Petition for Reconsideration (PFR).<sup>11</sup> With regard to the E Group Application, Mount Pleasant argued that the Branch erred in concluding that Section 21.902(c)(1) of the Commission's Rules required Mount Pleasant Partners Alpha

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<sup>5</sup> Application Return Notification, FCC File No. 61246-CM-P-91 (Aug. 11, 1993); Application Return Notification, FCC File No. 61247-CM-P-91 (Aug. 11, 1993). While the applications were returned, the return was equivalent to the dismissal of the applications because Mount Pleasant did not have an opportunity to resubmit the applications. The AFR explains that, "[a]ccording to the Commission's staff, the sole deficiency of the applications was the failure to provide service to some 45 applicants for the E and F Channel Groups for facilities in Big Rapids, Michigan, which were filed on July 31, 1991 (one day before the applications were filed), whose acceptance was never released on public notices and which had never been made available to the public. Instead, these applications were dismissed by the Commission's staff on March 10, 1993, as unacceptable for filing." AFR at 2 (*citing Public Notice*, Rep. No. D-686A (rel. Mar. 10, 1993)). We hereinafter refer to those forty-five previously proposed MMDS stations in Big Rapids, Michigan as the Big Rapids applicants or applications.

<sup>6</sup> Letter from James R. Keegan, Chief, Domestic Facilities Division, Common Carrier Bureau, FCC, to Ms. Laura C. Mow, Esq., Kelly, Hunter, Mow & Povich (Sep. 10, 1993).

<sup>7</sup> Letter from Robert James, Chief, Domestic Radio Branch, Domestic Facilities Division, Common Carrier Bureau, FCC, to Ms. Laura C. Mow, Esq., Kelly, Hunter, Mow & Povich (Aug. 31, 1994) (Dismissal Letter Alpha); Letter from Robert James, Chief, Domestic Radio Branch, Domestic Facilities Division, Common Carrier Bureau, FCC, to Ms. Laura C. Mow, Esq., Kelly, Hunter, Mow & Povich (Aug. 31, 1994) (Dismissal Letter Beta).

<sup>8</sup> Dismissal Letter Alpha at 2. The Branch therefore also found that Mount Pleasant Partners Alpha failed to submit the certification of service for Station WMI369 as required by Section 21.902(g) of the Commission's Rules. *See id.*

<sup>9</sup> Specifically, Mount Pleasant Partners Alpha based its analysis on vertical polarization, whereas the Big Rapids applications used horizontal polarization. *See id.* at 1. The Branch conducted an independent analysis using horizontal polarization and found that the proposed MMDS station would cause harmful co-channel interference to previously proposed stations in Big Rapids, Michigan. *See id.*

<sup>10</sup> Dismissal Letter Beta at 1. Consequently, the Branch further found that Mount Pleasant Partners Beta failed to comply with the interference study service requirements of Section 21.902(g) of the Commission's Rules. *See id.* at 2.

<sup>11</sup> Consolidated Petition for Reconsideration (filed Oct. 11, 1994) (PFR). In 1996, the applicants filed a request for expedited action on the PFR.

to prepare an interference study for Station WGW275, Saginaw, Michigan.<sup>12</sup> According to the PFR, Station WGW275 is located more than fifty miles from the E Group Application's proposed site and the signal from its transmitting antenna will not reach any portion of Station WGW275's protected service area.<sup>13</sup> The PFR further contended that the E Group Application poses no harmful co-channel interference to the previously proposed Big Rapids applications regardless of the polarity used.<sup>14</sup> The PFR included an interference study conducted by Mr. John Dalager, P.E. using horizontal polarization.<sup>15</sup> The study concludes "that the 45 dB desired-to-undesired signal ratio would be met at all test receive sites, except for receive site number 5, which is located directly in line with both transmitters. Because this receive site is completely terrain blocked, however . . . no harmful interference will occur from this site as well."<sup>16</sup> The PFR did not discuss the Branch's stated reasons for dismissing the F Group Application.

5. On January 20, 2000, the Division denied the PFR. The Division found that the original applications were correctly dismissed.<sup>17</sup> The Division affirmed the Branch's decision that Mount Pleasant failed to file interference studies, as required pursuant to Section 21.902(c), for stations that had been granted prior to the filing of the Mount Pleasant applications.<sup>18</sup> As noted above, Mount Pleasant Partners Alpha failed to file a required interference study for Station WGW275 and Mount Pleasant Partners Beta failed to file a required interference study for Station WMI369. The Division therefore also found that Mount Pleasant Partners Alpha and Mount Pleasant Partners Beta failed to comply with the service requirements of Section 21.902(g) of the Commission's Rules.<sup>19</sup> Because of the Division's finding that the applications lacked required interference studies, it found it unnecessary to consider the PFR's waiver request.<sup>20</sup> Mount Pleasant filed the instant AFR on February 22, 2000.

### III. DISCUSSION

6. The AFR contends that the Division made an erroneous finding as to a material question of fact in this case, *i.e.*, whether the proposed facilities would cause objectionable interference to existing or previously proposed MDS stations.<sup>21</sup> According to the AFR, Mount Pleasant demonstrated that, under Section 21.902(c) of the Commission's Rules, the proposed facilities were further than fifty miles from the Saginaw MDS station, and would not produce an "unobstructed electrical path" to its protected service contour.<sup>22</sup> Therefore, Mount Pleasant argues that it was not required to prepare interference

<sup>12</sup> PFR at 8. The PFR also contended that, as no interference analysis was required pursuant to Section 21.902(c)(1), Mount Pleasant Partners Alpha could not have violated the service requirements of Section 21.902(g) of the Commission's Rules. *Id.* at 8-9.

<sup>13</sup> *See id.* at 8-9. To support its position, the PFR provided the Commission with engineering data and an interference analysis. *See id.*, Appendix A and Exhibit 1 (1994 Dalager Declaration) (signed declaration of Mr. John Dalager, P.E., the professional engineer that prepared the submitted engineering data and studies).

<sup>14</sup> *See id.* at 6-7.

<sup>15</sup> *See id.*, Appendix B.

<sup>16</sup> *Id.* at 7. In the event that the Branch rejected the interference study, the PFR requested that "the Branch waive Section 21.902 as it relates to the Big Rapids applications." *Id.* at 7 n.8. The waiver request is based on the fact that the previously proposed Big Rapids applications have since been dismissed. *See id.*

<sup>17</sup> *See* Division Letter at 1.

<sup>18</sup> *See id.*

<sup>19</sup> *See id.*

<sup>20</sup> *See id.*

<sup>21</sup> AFR at 5-6.

<sup>22</sup> *Id.* at 6.

studies with regard to the Saginaw MDS stations in filing their applications.

7. In addition, Mount Pleasant notes that, although it provided engineering information with the PFR, the Division failed to address the data or cite contrary evidence to support the dismissal.<sup>23</sup> Consequently, Mount Pleasant believes that the Division's conclusion that the original dismissals were "correct" is arbitrary and capricious.<sup>24</sup> Moreover, Mount Pleasant contends that the Division's actions violate the long-standing principle that a regulatory agency must provide a clear basis for its decision.<sup>25</sup> Accordingly, Mount Pleasant requests that we vacate the Division's actions and grant the applications.

8. *The E Group Application.* We find that the E Group Application filed by Mount Pleasant Partners Alpha was correctly dismissed for failure to comply with Section 21.902 of the Commission's Rules. We disagree that Mount Pleasant Partners Alpha has demonstrated that the proposed facilities were further than fifty miles from the Saginaw MDS station, and would not produce an "unobstructed electrical path" to its protected service contour.<sup>26</sup> We find that the documentation attached to the PFR fails to warrant such an assertion. The engineering studies submitted by Mount Pleasant Partners Alpha contain errors and omissions. Specifically, Mount Pleasant Partners Alpha only studied eight data points in determining whether there would be terrain blockage between its proposed station and Station WGW275. In comparison, an independent analysis performed by the Commission's staff confirms that the E Group Application's proposed facilities have an unobstructed electrical path to a small portion of the protected service area of Station WGW275.<sup>27</sup> The staff's analysis determined that there was a small area with an unobstructed electrical path at about 20 miles from Station WGW275's transmitter site at an azimuth of approximately 297 Degrees from True North.<sup>28</sup> Station WGW275 is licensed to operate using a directional antenna pointed at 310 Degrees from True North, thereby extending its protected service area in that direction to approximately 21 miles.<sup>29</sup> Because the E Group Application's proposed facilities

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<sup>23</sup> *Id.* at 6.

<sup>24</sup> *Id.* at 7-8.

<sup>25</sup> *Id.* at 7.

<sup>26</sup> *Id.* at 6. At the time that the application was filed, 47 C.F.R. § 21.902(c)(1) required an applicant to prepare an analysis of the potential for harmful co-channel interference with any authorized or previously proposed station if (i) the proposed transmitting antenna had an unobstructed electrical path to any part of the protected service area of any other station that utilizes, or would utilize, the same frequency; or (ii) if the proposed transmitter is within 50 miles of the coordinates of any such station. . . . 47 C.F.R. § 21.902(c)(1)(i)-(ii).

<sup>27</sup> The staff's engineering studies with respect to MDS/ITFS point-to-multipoint (broadcast style) facilities are performed using a terrain shadow map that is generated from a computer program utilizing 3 arc second terrain data. The terrain shadow map shows areas that have an unobstructed path or "line of sight" to a subject antenna. The protected service areas of an affected party are then drawn onto the terrain shadow map. Any region of LOS that is inside an affected party's protected service area has the potential to receive harmful electrical interference. Calculations are performed to determine if the FCC's standard for desired-to-undesired (D/U) signal ratio minimums is satisfied. The calculations performed are based on the engineering standard of the linear communications model. Therefore, 45dB is the co-channel interference standard and 0dB is the adjacent channel interference standard. See 47 C.F.R. § 21.902. Both referenced standards apply to a 6MHz channel.

<sup>28</sup> True North: in the direction to the north pole from a subject location on earth along the shortest path while using the latitude, longitude coordinate system.

<sup>29</sup> We note that Mount Pleasant Partners Alpha failed to take into account the correct protected service area of Station WGW275 in preparing its engineering analysis. Mr. Dalager incorrectly assumed that Station WGW275 used an omnidirectional antenna in calculating Station WGW275's protected service area. However, as noted, Station WGW275 is licensed to operate using a directional antenna. As a result of the miscalculation, Mount Pleasant Partners Alpha failed to pick up the small area of interference found in the protected service area of Station WGW275.

have an unobstructed electrical path to a small portion of the protected service area of Station WGW275, Mount Pleasant Partners Alpha was required to prepare and serve a copy of the interference study on the licensee of Station WGW275 prior to filing the E Group Application.<sup>30</sup> Its failure to do so correctly resulted in the dismissal of the E Group Application.<sup>31</sup> Consequently, we deny the AFR with respect to the E Group Application.

9. *The F Group Application.* We dismiss the AFR with respect to the F Group Application. As noted previously, the Branch dismissed the F Group Application on August 31, 1994 for failure to include the analysis of the potential for harmful co-channel interference for previously-proposed co-channel Station WMI369 in Saginaw, Michigan, as required by Section 21.902(c)(1).<sup>32</sup> However, in its AFR, Mount Pleasant Partners Beta did not address its failure to provide an analysis of Station WMI369 in its PFR.<sup>33</sup> As a result, Mount Pleasant Partners Beta failed to afford the Branch the opportunity to consider the questions of fact or law that were raised for the first time in the AFR with respect to Station WMI369.<sup>34</sup> We therefore find that, because of its failure to timely contest the Branch's dismissal of the F Group Application due to its potential for harmful co-channel interference for previously-proposed co-channel Station WMI369, Mount Pleasant Partners Beta has effectively conceded the matter. For the reasons discussed above, we therefore dismiss the AFR to the extent that it seeks reinstatement and grant of the F Group Application.

#### IV. ORDERING CLAUSE

10. Accordingly, IT IS ORDERED that pursuant to Sections 4(i) and 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), and Section 1.115 of the Commission's Rules, 47 C.F.R. § 1.115, the Consolidated Application for Review filed by Mount Pleasant Partners Alpha and Mount Pleasant Partners Beta on February 22, 2000 IS DENIED IN PART AND DISMISSED IN PART.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

<sup>30</sup> See 47 C.F.R. § 21.902(c)(1)(i), (g).

<sup>31</sup> See *Hinton Telephone Company, et al., Memorandum Opinion and Order on Reconsideration*, 10 FCC Red 11625, 11638 (1995).

<sup>32</sup> Dismissal Letter Beta at 1. As noted above, the Branch also found that Mount Pleasant Partners Beta failed to comply with the interference study service requirements of Section 21.902(g) of the Commission's Rules. See *id.* at 2.

<sup>33</sup> See, e.g., AFR at 4 n.3.

<sup>34</sup> 47 C.F.R. § 1.115(c); see *Regionet Wireless License, LLC, Memorandum Opinion and Order*, 17 FCC Red 21269, 21273 ¶ 11 (2002).